

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:NER:NED:BOS:TL-N-1190-00

MJGormley

late:

**JUN 15 2001**

to: Chief, Examination Division  
Attn: Richard Stanton, Group Manager

om: District Counsel, New England District, Boston

ject: [REDACTED]: Disclosure of a Third Party Contact

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This memorandum is being issued in order to clarify and emphasize a point made in an earlier memorandum from our office dated April 11, 2000, regarding the above-referenced taxpayer. You had requested our advice regarding the nondisclosure of the identity of a third party source/expert in the [REDACTED] case. A copy of that memorandum is attached for your reference.

The third party source/expert, [REDACTED], a former employee of the taxpayer, was initially contacted and interviewed by IRS personnel in order to assist in the factual development of the case. [REDACTED] was later hired by the IRS as an expert to assist in the valuation of the taxpayer's assets. During the IRS' contacts with [REDACTED], the former employee expressed concern that his financial interests could be jeopardized by his dealings with the IRS. IRS personnel sought to keep his identity confidential and did not release his name to the taxpayer as a third party contact.

In our April 11, 2000 memorandum, we advised you that reprisal concerns raised by [REDACTED] needed to be evaluated by the Service employee making the contact. Any such concerns should be taken at face value and the proper record keeping procedures under I.R.C. § 7602(c) should be followed. We noted, however, that his identity might not be protected under a FOIA request or a discovery request made by the taxpayer. In addition, we also pointed out that if this case proceeded to trial, [REDACTED] might be required to testify on behalf of the government, in accordance with his employment contract, in support of the government's case.

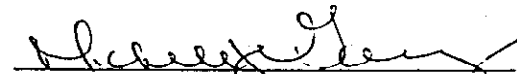
We wish to emphasize that [REDACTED] occupied different roles during the course of his relationship with the IRS and the applicability of I.R.C. § 7602(c) varies with each role he played. Up until the time he was hired as an expert witness, the third party contact rules would apply but his identity would not be subject to disclosure based upon his fear of reprisal. For the time he worked as an expert, [REDACTED] would be treated as an employee of the service. In that capacity his identity would not be shielded from disclosure under the reprisal exception of I.R.C. § 7602(c), but the Service is not required by § 7602 to inform the taxpayer that he was hired by the Service.

Experts hired by the Service operate under the same disclosure restrictions as IRS employees. The disclosure provisions of I.R.C. § 7602(c) do not apply to contacts between or among Service employees. The taxpayer may be able to learn of [REDACTED]'s relationship with the Service in the same way that it may be able to learn the identity of anyone else who works for the Service.

If you have any further questions regarding this matter,  
please contact Michele J. Gormley at 617/565-7858.

MAUREEN T. O'BRIEN  
Assistant District Counsel

By:

  
MICHELE J. GORMLEY  
Senior Attorney

cc: Field Service  
Assistant Regional Counsel (TL)